

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

**IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION**

MDL 2326

**THIS DOCUMENT RELATES TO CASES
IDENTIFIED ON EXHIBIT A**

MEMORANDUM OPINION AND ORDER

Pending in the cases identified on Exhibit A are (1) Motions to Withdraw as Counsel of Record filed by plaintiffs' counsel in the cases on Exhibit A; and (2) Boston Scientific Corporation's Motions to Dismiss With Prejudice. In the motions to withdraw, plaintiffs' counsel moves to withdraw after losing communication with the plaintiffs in the cases on Exhibit A despite numerous attempts to contact plaintiffs. In the second group of motions, defendant Boston Scientific Corporation ("BSC") moves the court for an order dismissing the cases on Exhibit A with prejudice for failure to serve a Plaintiff Fact Sheet pursuant to deadlines and requirements established by Pretrial Order Nos. 17 and 328. Plaintiffs' counsel in the cases on Exhibit A has responded to the motions, indicating that plaintiffs do not dispute that the plaintiffs on Exhibit A have not served a Plaintiff Fact Sheet. Counsel further asserts that dismissal with prejudice in the cases on Exhibit A is extreme and a less drastic sanction such as dismissal without prejudice is more appropriate. Finally,

counsel asserts in all cases on Exhibit A that the court should first rule on pending motions to withdraw as counsel.

For reasons appearing to the court, the court **ORDERS** that the motions to withdraw identified on Exhibit A are **DENIED**.

Turning to BSC's motion, the court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that BSC should be dismissed without prejudice from the cases on Exhibit A for plaintiffs' failure to serve a Plaintiff Fact Sheet in compliance with the court's applicable pretrial orders.

Therefore, the court **ORDERS** that in the cases on Exhibit A, the motions to dismiss are **GRANTED in part** to the extent BSC seeks dismissal and **DENIED insofar as BSC seeks dismissal with prejudice**. The court **ORDERS** that in the cases on Exhibit A, BSC is dismissed without prejudice, and the cases are closed and stricken from the court's docket.

The court **DIRECTS** the Clerk to file a copy of the Order in each individual case listed on Exhibit A and send a copy of this Order to counsel of record and any unrepresented party in the cases on Exhibit A.

ENTER: July 17, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

Exhibit A

		<u>Motion to Withdraw</u>	<u>Motion to Dismiss</u>
Acree	2:13-cv-20722	ECF No. 12	ECF No. 16
Arrieta	2:13-cv-23493	ECF No. 12	ECF No. 16
Davis	2:13-cv-23895	ECF No. 13	ECF No. 17
Debow	2:13-cv-11382	ECF No. 13	ECF No. 17
Escobedo	2:14-cv-14479	ECF No. 13	ECF No. 17
Isaacs	2:13-cv-24390	ECF No. 12	ECF No. 16